

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE  
VARIANCE PERMIT GRANTED BY MASON  
COUNTY TO RICHARD F. BUECHEL  
and DENIED BY WASHINGTON  
STATE DEPARTMENT OF ECOLOGY,  
  
RICHARD F. BUECHEL and MASON  
COUNTY,

Appellants,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondent.

SHB No. 85-1

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

This matter, the appeal of a shoreline variance approval for a structure on Hoods Canal, came on for hearing before the Shorelines Hearings Board; Lawrence J. Faulk, presiding, Wick Dufford, Rodney M. Kerslake, Nancy R. Burnett, and John Pitts, Members, on July 11, 1985, at Shelton, Washington. The proceedings were officially reported by Nancy A. Miller.

1 Appellant was represented by Attorney Benjamin H. Settle.  
2 Respondent Mason County was not represented. Respondent Department of  
3 Ecology was represented by Assistant Attorney General Allen T. Miller,  
4 Jr.

5 Witnesses were sworn and testified. Exhibits were admitted and  
6 reviewed and oral argument was heard. From the testimony, evidence  
7 and argument the Board makes these

## 8 FINDINGS OF FACT

### 9 I

10 The proposed development is a 20 x 35 foot, two-story home located  
11 in Mason County on the south shore of Hood Canal approximately one and  
12 half miles east of Union. The Mason County Shoreline Master Program  
13 (MCSMP) designation of the area is Urban Residential; Hood Canal  
14 itself is a shoreline of statewide significance as designated in the  
15 Shoreline Management Act (SMA). Lots in the area are developed, with  
16 permanent and vacation residences.

### 17 II

18 Respondent Richard F. Buechel seeks approval from the Shorelines  
19 Hearings Board of a variance granted by Mason County and denied by the  
20 Department of Ecology for a permanent residence. The buildable lot  
21 area, entirely bulkheaded is approximately 1,000 square feet. The  
22 structure would not be supported by the bulkhead. Appellant has an  
23 approved septic tank system from the Mason County Health Department.  
24 This septic tank would be installed on the lot and sewage then pumped  
25 approximately 800 feet to an upland drainfield on property owned by

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1 the applicant. A residence is constructed on the adjacent lot to the  
2 west.

3 III

4 The subject property consists of 35 feet of waterfront on which  
5 exists an old bulkhead. Appellants have added a small amount of fill  
6 to stop the erosion. Appellant wishes to build waterward of the  
7 15-foot setback on this undersized lot. Appellant owns a permanent  
8 home across the road and a short distance from this beach property.

9 IV

10 A home was built on physically similar property just west of  
11 appellant's lot pursuant to an SMA variance issued by Mason County on  
12 October 13, 1980, and approved by the Department of Ecology. That  
13 dwelling replaced a smaller mobile home on the site. In recommending  
14 approval, the county planning staff concluded that

15 Due to the unique location of the site, and the  
16 limited development opportunity in the immediate  
17 shoreline vicinity, the proposed home and dock built  
18 forward of the setback required by the plan would not  
19 set a precedent for others to follow.

20 V

21 Nearby waterfront parcels are used for recreational purposes,  
22 involving docks, floats, decks or boat houses, but without homes on  
23 the properties.

24 VI

25 On August 3, 1984, appellant Buechel applied for a substantial  
26 development permit and variance for the subject project.

VII

On September 27, 1984, the Mason County Shorelines Advisory Board unanimously approved appellant Buechel's application for a variance. On November 19 1984, the Mason County Commissioners granted the variance application. On December 28, 1984, the Department of Ecology denied the variance.

VIII

Feeling aggrieved by the decision, the appellants requested review by this Board on January 15, 1985. On January 23, the request for review was certified by the Department of Ecology. A pre-hearing conference was held on February 22, 1985.

IX

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

The Shorelines Hearings Board reviews applications for shoreline permits de novo, conscious, of course, that the burden of proof is on the appellant in this case. The question to be decided by the Board is whether construction of the proposed residence is consistent with the Shoreline Management Act (SMA) and the Mason County Shoreline Master Program (MCSMP), particularly the variance criteria adopted pursuant thereto.

II

The policy of the Shoreline Management Act of 1971 is set forth in RCW 90.58.020. The major policy consideration relevant here is stated as follows:

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto. (Emphasis added.)

III

Pursuant to the Act's policy promoting planning for reasonable uses Mason County developed standards for setbacks and minimum lot size for the Urban Environment. The Mason County Shoreline Master Program (MCSMP), Section 7.20.010 reads as follows:

A. Minimum lot size - the maximum shall be 4 structures per acre or a minimum of 10,000 square feet per lot structure.

C. Setbacks - the minimum setback for buildings shall be 15 feet from the line of ordinary high water, provided that structures shall not extend beyond the common line of neighboring structures, and new construction shall not substantially reduce the view of neighboring structures.

The proposed residence would not be set back fifteen feet from the line of ordinary high water and would be placed on an undersized lot; therefore it requires a variance if it is to comply with the MCSMP.

IV

The MCSMP allows variances to be granted under the following conditions:

Variances deal with specific requirements of this ordinance and the objective is to grant relief when there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this ordinance. The property owner must show that if he complies with the provision, he cannot make any reasonable use of his property. The fact that he might make a greater profit by using his property in a manner contrary to the intent of the ordinance is not a sufficient reason for a variance. A variance will only be granted after the applicant can demonstrate the following: (Emphasis added.)

A) The hardship which serves as a basis for the granting of a variance is specifically related to the property of the applicant.

B) The hardship results from the application of the requirements of the Shoreline Management Act and this ordinance, and not from, for example, deed restrictions or the applicant's own actions.

C) The variance granted will be in harmony with the general purpose and intent of this ordinance.

D) Public welfare and interest will be preserved; if more harm will be done to the area by granting the variance than would be done to the applicant by denying it, the variance will be denied. MCSMP Section 7.28.020.

V

The threshold question that needs to be answered by this Board is: does the applicant have any reasonable use of his property without this project? If he does, then we need not determine whether the proposed project meets Item "A" through "D" in the variance criteria.

VI

Given the extremely small buildable area on this lot,

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1 substantially confined to fill on a shoreline of statewide  
2 significance, it is questionable that the construction of a two-story  
3 dwelling is itself a reasonable use of the property under the policy  
4 of the SMA, absent the setback and lot size restrictions of the master  
5 program.

6 However, clearly these restrictions do not deprive appellant of  
7 any reasonable use of his property. Recreational use of small  
8 shoreline parcels without the presence of homes is being made on Hood  
9 Canal in the vicinity of appellant's lot. Such use is available to  
10 appellant, and this situation, we conclude prevents him from meeting  
11 the threshold requirement for a variance under the MCSMP.

#### 12 VII

13 The earlier County and DOE approval of a variance for a home just  
14 west of appellant's parcel does not affect our decision. That matter  
15 was not appealed to this Board nor adjudicated by it under the  
16 standards of the master program.

17 Now the home which was justified, in part, as non-precedential is  
18 being held up as a precedent. We are concerned with the case before  
19 us. Past inconsistent administration never brought to use for review  
20 cannot alter the plain meaning of the master program as we apply it to  
21 the facts at hand.

#### 22 VIII

23 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
24 adopted as such.

25 From these Conclusions of Law the Board enters this

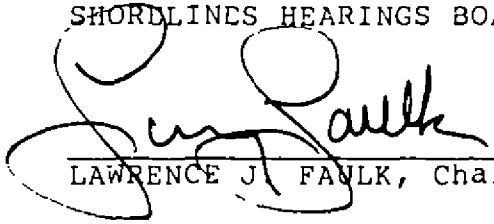
26 FINAL FINDINGS OF FACT,  
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ORDER


The instant variance deined by DOE is affirmed and the approval, thereof, by the Mason County Commission is reversed.

DONE this 9th day of October, 1985.

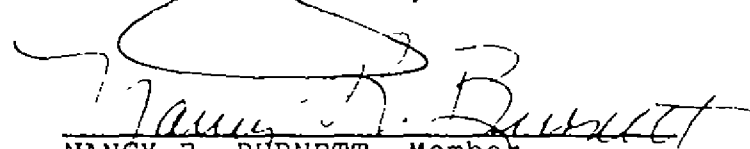
SHORDLINES HEARINGS BOARD

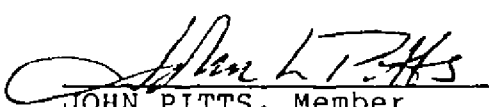
 <sup>9/25/85</sup>  
LAWRENCE J. FAULK, Chairman

Did not participate  
GAYLE ROTHROCK, Vice Chairman

  
WICK DUFFORD, Lawyer Member

  
RODNEY M. KERSLAKE, Member

  
NANCY R. BURNETT, Member

 10-1-85  
JOHN PITTS, Member